

### Remarks

This communication is responsive to the Final Office Action of **April 24, 2009**.  
Reexamination and reconsideration of the claims is respectfully requested.

### Status of Claims

Claims 1-5, 7-8 and 38-42 are pending for examination.

Claims 1, 38, and 40-42 are amended herein.

Claim 6 is cancelled.

Claims 9-37 were previously withdrawn.

Claims 1, 38, and 40-42 are in independent form.

### Summary of The Office Action

**Claims 1-8 and 38-41** were rejected under 35 USC §103(a) as purportedly being unpatentable over Everett et al (WO 00/69333) (Everett) in view of "Polarization Effects in Optical Coherence Tomography of Various Biological Tissues," Johannes F. de Boer (Boer).

## **The Claims Patentably Distinguish Over the References of Record**

### **35 U.S.C. §103**

**Claims 1-8 and 38-41** were rejected under 35 USC §103(a) as purportedly being unpatentable over Everett in view of Boer.

To establish a prima facie case of 35 U.S.C. §103 obviousness, basic criteria must be met. The prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.(A) Section 2131 of the MPEP recites how "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). This same standard applies to 103 rejections as evidenced by Section 2143(A) of the MPEP, which reads: "The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements** were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions".

When establishing a prima facie case of obviousness the Office must clearly articulate the reason(s) the claimed invention would have been obvious. MPEP 2142 recites that:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at 418, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Here, the criteria for establishing a prima facie case of obviousness are not satisfied since the combination of references does not teach or suggest all the claim limitations. None of the references, alone and/or in combination, teach "where the reference arm is absent addressable polarization selecting components." Thus, none of the claims are obvious for at least this reason.

### **The Prior Art Fails To Teach No Addressable Polarization Selecting Components In The Reference Arm**

The claims recite, "where the reference arm is absent **addressable** polarization selecting components." (Emphasis added). Neither Everett nor Boer teach or suggest this claim limitation. Examination of Everett shows that Everett teaches, "the wave plate 16 makes the polarization state adjustable. Any polarization state can be used: circularly polarized, elliptically polarized, or linearly polarized." (Everett page 8 lines 27-29; figure 1, element 16). One of ordinary skill in the art would appreciate that Everett teaches using an addressable polarization selecting component in the reference since the wave plate taught by Everett "**makes the polarization state adjustable.**" Thus, Everett teaches the use of addressable polarization selecting components in the reference arm. Boer does not remedy the shortcomings of Everett. Thus, the combination of Everett and Boer does not teach or suggest "where the reference arm is absent polarization adjusting components." Therefore, the Office Action has not presented a prima facie case of obviousness. Accordingly, the claims are allowable.

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### **Conclusion**

For the reasons set forth above, the claims are now in condition for allowance.  
An early allowance of the claims is earnestly solicited.

Respectfully submitted,

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